

COUNTY OF SUFFOLK



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DEPARTMENT OF LAW

June 6, 2018

Hon. Joseph F. Bianco, U.S.D.J.
United States District Court, Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, New York 11722

Re: *Calvente v. County of Suffolk*
CV15-2024 (JFB)(ARL)

Dear Judge Bianco:

This office represents the County of Suffolk, defendant in this civil rights action pursuant to 42 U.S.C. §1983 brought by plaintiff Jose Calvente. Defendant submits this letter to follow up an question of law raised at the hearing held this morning on the issue of whether plaintiff exhausted his administrative remedies prior to commencing this action, as required by 42 U.S.C. §1997e of the Prison Litigation Reform Act. .

One of plaintiff's contentions is that he exhausted his administrative remedies by filing a Notice of Claim pursuant to N.Y. General Municipal Law §50-e. Respectfully, we point out that on at least one prior occasion, this Court has recognized the absence of authority for the proposition that a notice of claim constitutes proper exhaustion under the PLRA. *Dolce v. Suffolk County*, No. 12-cv-0108 (JFB)(WDW), 2014 WL 655371, *4 n. 3 (E.D.N.Y. Feb. 20, 2014) citing *Woodford v. Ngo*, 548 U.S. 81, 91 (2006). See also *Flowers v. City of New York*, 668 F. Supp.2d 574, 577-78 (S.D.N.Y. 2009)(dismissing for non-exhaustion despite plaintiff's filing of notice of claim); *Rowe v. Lilly*, No 99 Civ 4317, 2000 WL 1677710, *2 (S.D.N.Y Nov. 8, 2000)(notice of claim is not a substitute for a grievance within the meaning of the PLRA)

We thank the Court for its continued time and attention to this case.

Respectfully submitted,

Dennis Brown
Suffolk County Attorney

/s/ Arlene S. Zwillling

By: Arlene S. Zwillling
Assistant County Attorney